

EXHIBIT A

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 2:12-cv-01282-JLR

RESPONSE OF THE COMMUNITY
POLICE COMMISSION TO UNITED
STATES BRIEF REGARDING DRAFT
LEGISLATION

I. INTRODUCTION

The Community Police Commission (CPC) respectfully submits this response to the United States' brief regarding the City of Seattle's draft accountability systems legislation, Dkt. No. 331. The United States raises two concerns regarding the CPC's role in the draft legislation. The first pertains to prioritizing the CPC's obligations under the Consent Decree. *Id.* at 10. The second pertains to the proposal that the CPC conduct performance assessments of the Office of Inspector General (OIG). *Id.* The CPC addresses these concerns below.

The CPC previously filed a response to the draft legislation. Dkt. No. 327-1.

II. ANALYSIS

A. **There is no one-size-fits-all model for accountability. Every community should make decisions about what works best.**

The United States identifies the community as a critical resource for police reform and enumerates principles of police reform relating to civilian oversight and community input. It also acknowledges that “there is no single, best way to structure civilian oversight of all police departments” and observes that it “conducted its review in deference to the elected representatives of the citizens of Seattle to craft a system that works best for this community.” Dkt. No. 331 at 7. The CPC agrees with this philosophical perspective. As we have stated before, “Every city starts with its own unique institutions, experiences, needs, problems, and opportunities. The challenge is to identify and discard bad elements of the status quo, strengthen what is good, fill gaps with new institutions and mechanisms where needed, and establish crucial measures to ensure the independence and effectiveness of each component body of the oversight system.” Dkt. No. 327-1 at 3. The Court, too, has expressed:

The role of the Court is not to tell the City of Seattle how to run its police department. There are various models ranging from full civilian oversight to hybrid civilian oversight to no civilian oversight. And, ultimately, that’s a decision that the public makes through its elections, and that the elected officials make through their decisions. My role is to look at those processes and ensure that they meet those three levels of public scrutiny and constitutional performance that the Department of Justice opened its presentation with.

Aug. 25, 2015 Hr’g Tr. at 32:22-33:5. The “three levels of public scrutiny” identified by the Court refer to policing (1) that complies with the Constitution; (2) that allows police to be effective; and (3) that the people of the community can have confidence in. *Id.* at 12:9-20.

B. **The CPC is prepared to meet its responsibilities under the Consent Decree.**

The CPC agrees that the City must prioritize performance of the CPC’s responsibilities under the Consent Decree and that additional duties must not supersede the Consent Decree

responsibilities. The CPC believes this is the intention of the draft legislation. The City's proposal states:

The duties of the CPC are to:

...

... To the extent not otherwise covered above, continue to fulfill the responsibilities of the CPC as set forth in the Consent Decree and Memorandum of Understanding in *United States of America v. City of Seattle*, 12 Civ. 1282 (JLR) until such time as the Consent Decree ends.

Dkt. No. 328-1 at 34, 36. The CPC anticipates no difficulty in fulfilling its obligations under the Consent Decree, including the review of and input on assessments and policies identified in future monitoring plans (assuming timely receipt of the materials and the CPC's ability to meet with the parties). The legislation could be revised to make explicit the requirement that Consent Decree work take precedence.

C. The community has a meaningful role to perform in civilian oversight.

The United States frames the role of a community board as one of solely "providing input" to others rather than exercising authority. Dkt. No. 331 at 11. This perspective is inconsistent with emerging practices and approaches around the country. Community boards increasingly do far more than provide "input" to the decisions of others. Management authority has been vested in community-based oversight structures in numerous cities. For example, in Los Angeles, the Inspector General reports to a community-based police commission that also establishes police department policy. In San Francisco, a community-based police commission makes disciplinary decisions and nominates the Chief of Police who reports jointly to the mayor and commission and may be removed by either acting jointly or independently. In other communities, such as Newark and New York, independent civilian review boards serve in a quasi-judicial capacity and make officer discipline decisions.

1 In contrast, the CPC's recommendations took a new approach, appropriate to Seattle.
2 Despite years of advocacy by some of its members in support of an independent civilian review
3 board model, the CPC ultimately supported professional investigations of alleged misconduct,
4 albeit with a balance of sworn and civilian staff, and the Chief of Police retaining disciplinary
5 authority. The CPC made this decision for two reasons. First, after extensive research, the CPC
6 concluded that too often even in cities with independent civilian bodies making disciplinary
7 decisions there are unsatisfactory outcomes, including insufficient public confidence in the
8 system. Second, the CPC wanted to do better than other jurisdictions and so it committed to
9 strengthening Seattle's existing system and proposed what is, in its view, the best approach to
10 civilian oversight for our city. That enhanced structure is fundamentally sound, however, only so
11 long as it includes a strong community-based entity with authority to review and weigh in on
12 police policies and on systemic performance, including the responsiveness of SPD, the City, and
13 accountability system professionals to community concerns, which has been missing to date.
14 Rather than placing the community board in judgment over particular cases and personnel
15 decisions, we recommended that it have overall oversight authority over the accountability
16 system as a whole, and a strong role in policy development in key areas.

17 **D. CPC evaluation of the OIG's performance is consistent with the aims of reform.**

18 The United States objects to an alternative provision in the draft legislation for the CPC
19 to "evaluate the performance of OIG and its management and leadership, after soliciting public,
20 Mayoral, City Attorney, City Council, Chief of Police, and SPD employee perspectives." Dkt.
21 No. 331 at 11. It is concerned that this provision "confuses the role of the CPC with those
22 responsible for the functioning of the OIG." *Id.*

23 The provision in issue is the result of thought and deliberation. In general, the CPC
24 agrees on the importance of role clarity among the civilian oversight entities. Many of the CPC's
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1 recommendations to improve the current accountability system are driven by this goal. Indeed,
2 the CPC believes that role clarity is enhanced by an explicit delegation to the CPC of authority to
3 formally review the OIG compared to a system that simply allows the CPC to give “input” into
4 the OIG’s functioning. At the same time, the draft legislation contains provisions in the draft
5 legislation purposefully designed to create redundancies as checks against system failures or
6 weaknesses, particularly should an office and its leadership perform poorly or without a
7 commitment to or an understanding of what makes policing legitimate in the eyes of the public.
8 For example, the draft legislation retains provisions for the OIG to conduct quarterly or real-time
9 review of the OPA’s classifications and investigations, a continuation of the OPA Auditor’s
10 current responsibilities. Dkt. No. 328-1 at 23-24. This redundancy is widely acknowledged to
11 have contributed to improving the quality of OPA’s investigations and is an important “belt and
12 suspenders” feature of the proposed legislation. Seattle’s experience shows that redundancies to
13 protect against failures are an essential part of a strong and effective accountability system,
14 which is (1) why these checks and balances were a core principle underlying the CPC’s original
15 accountability system recommendations in 2014 and (2) presumably why the United States has
16 not objected to the OIG’s reviews or to other redundancies built into the draft legislation.
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19 The CPC believes it is a given that someone should have the authority to evaluate the
20 OIG, particularly after the end of the Consent Decree and when Court supervision ends. The
21 CPC submits that it would be eminently reasonable for the City’s elected leaders to conclude that
22 CPC evaluation of the OIG promotes policing that (1) complies with the Constitution; (2) allows
23 police to be effective; and (3) inspires confidence in the community. Certainly, the draft
24 provision does not violate the letter or the spirit of the Consent Decree. Whether the OIG should
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1 be evaluated by a community-based body is a policy judgment that should be left to Seattle's
2 elected leaders. The CPC requests that the Court not order or direct the City on this issue.

3 There is a strong rationale for the CPC to periodically evaluate the OIG's performance.
4 To ensure independence of the three proposed accountability offices (the OPA, the OIG and the
5 CPC), it is critical that political appointees are not evaluated solely by those who appointed
6 them. The proposed legislation therefore provides that the OIG evaluate the OPA and its
7 management, and one alternative provides that the CPC evaluate the OIG and its management.
8 CPC members not only directly represent a broad spectrum of community interests, they are
9 responsible for outreach to identify policing issues relevant to our city's diverse communities.
10 Their core obligation is to bring community perspectives to the police oversight system. This
11 representation, competency, and knowledge will ensure that any evaluation considers
12 performance in light of community expectations. We cannot take for granted that the political
13 interests of the appointing authorities will not sometimes supersede the interests of genuine
14 police accountability. To better ensure the public's belief in the legitimacy of the accountability
15 system, those representing the public's interests must have a key role in assessing its
16 performance.
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19 Furthermore, the City filed proposed legislation but was not asked to make a detailed
20 case for any of its provisions. There has not been a full, public airing—in this Court or
21 elsewhere—of opposing viewpoints regarding the alternatives over which there currently is no
22 consensus. So long as they do not conflict with the Consent Decree, the City Council should
23 have an opportunity to weigh the pros and cons underlying all proposed approaches without
24 having them preemptively excluded by the Court. This honors the principle articulated by the
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1 United States that there is no definitive “best approach” to civilian oversight and that it is up to
2 elected leaders to choose a system that meets this specific community’s needs.

3 III. CONCLUSION

4 The CPC worked assiduously over the last two years to reach common ground with all
5 stakeholders in the accountability system. In doing so, the CPC agreed to some softening of
6 language pertaining to the authority of the CPC that was preferred by other stakeholders, while
7 holding the line on certain key points. Any further dilution of the CPC’s authority is of deep
8 concern. It cannot be optional for SPD, OPA or the OIG to engage with the CPC, and the CPC’s
9 system oversight role must be clearly spelled out in law to send that message and ensure it
10 actually happens. An accountability structure which does not give authority to the community-
11 based oversight entity to evaluate the professional-based oversight system is out of step with the
12 national direction and the sentiment of communities, and may harm the perceived legitimacy of
13 the system.
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15 In sum, a community-based oversight body that that is purely advisory, provides only
16 “input” to other decision-makers, and has no formal role in policy development or in evaluating
17 the efficacy of the accountability system and its components would fall well short of community
18 expectations and be out of step with practices elsewhere in the nation.
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20 RESPECTFULLY SUBMITTED this 15th day of November, 2016.

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2 s/Harriet Walden
3 Rev. Harriett Walden
4 Co-Chair, Community Police Commission

5 s/ Lisa Daugaard
6 Lisa Daugaard
7 Co-Chair, Community Police Commission
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